

# Chapter 1

## Introduction and background

### Referral and conduct of the inquiry

1.1 On 4 December 2014, the Senate referred the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014 (Bill) to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 5 March 2015.<sup>1</sup> On 3 March 2015, the Senate granted an extension of time to report until 17 June 2015.<sup>2</sup> The Bill is a private senator's bill, introduced into the Senate by Senator Penny Wright on 3 December 2014.<sup>3</sup>

1.2 The committee advertised the inquiry on its website. The committee also wrote to over 60 individuals and organisations, inviting written submissions.

1.3 The committee received 12 submissions to the inquiry. These submissions are listed at Appendix 1, and are available on the committee's website at [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon).

### Background

#### *Role of the Independent National Security Legislation Monitor*

1.4 The position of Independent National Security Legislation Monitor (Monitor) is established under the *Independent National Security Legislation Monitor Act 2010* (INSLM Act).

1.5 Section 3 of the INSLM Act states that the object of the Act is to appoint a Monitor who will assist Ministers in ensuring that Australia's counter-terrorism and national security legislation:

- (a) is effective in deterring and preventing terrorism and terrorism-related activity which threatens Australia's security;
- (b) is effective in responding to terrorism and terrorism-related activity;
- (c) is consistent with Australia's international obligations, including:
  - (i) human rights obligations;
  - (ii) counter-terrorism obligations;
  - (iii) international security obligations; and
- (d) contains appropriate safeguards for protecting the rights of individuals.

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1 *Journals of the Senate*, 4 December 2014, pp 1984-1985.

2 *Journals of the Senate*, 3 March 2015, p. 2223.

3 *Journals of the Senate*, 3 December 2014, p. 1967.

1.6 Under the INSLM Act, the Monitor is appointed on a part-time basis for a period not exceeding three years, and is eligible for re-appointment to the position once only.<sup>4</sup>

1.7 The Monitor is empowered to review matters on his or her own initiative relating to the operation, effectiveness and implications of any Commonwealth laws relating to Australia's counter-terrorism and national security legislation (own-motion referral powers). This can include whether such legislation: contains appropriate safeguards for protecting the rights of individuals; remains proportionate to any threat of terrorism or threat to national security; and remains necessary. The Monitor may also assess whether Australia's counter-terrorism or national security legislation is being used for matters unrelated to terrorism and national security.<sup>5</sup>

1.8 In addition to own-motion referral powers, the Monitor may also be referred particular matters for inquiry by the Prime Minister or by the Parliamentary Joint Committee on Intelligence and Security.<sup>6</sup>

1.9 Section 9 of the INSLM Act provides that, when performing functions relating to Australia's counter-terrorism and national security legislation in a particular financial year, the Monitor must give particular emphasis to provisions of that legislation that have been considered, applied or purportedly applied by government agencies during the current financial year or the immediately preceding financial year.

1.10 Under section 29 of the INSLM Act, the Monitor must provide an annual report to the Prime Minister, outlining the activities undertaken by the Monitor in the previous financial year. The Prime Minister must then table the annual report in the parliament. If the Monitor's annual report contains sensitive national security information, a declassified version of the report must also be presented to the Prime Minister, with the declassified report being the version to be tabled in Parliament and made publicly available.

### ***History of the position of Independent National Security Legislation Monitor***

1.11 The office of the Independent National Security Legislation Monitor was established in 2010, following several years of discussion surrounding the need for such a position in the context of changes to national security legislation made between 2001 and 2006.

1.12 During 2005 and 2006, a Security Legislation Review Committee (SLRC), established by the then government and chaired by the Hon Simon Sheller AO QC, conducted a one-off public review of a number of Commonwealth counter-terrorism laws. The first recommendation of its report, published in June 2006, was that the government should establish a continuing review mechanism for counter terrorism

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4 *Independent National Security Legislation Monitor Act 2010* (INSLM Act), sections 11-12.

5 INLSM Act, section 6.

6 INSLM Act, sections 7-7A.

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legislation, either through the appointment of an independent reviewer or through a further report of the SLRC.<sup>7</sup>

1.13 A report of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in 2006 recommended that an independent reviewer be appointed to provide comprehensive and ongoing oversight of Australia's anti-terrorism laws.<sup>8</sup> The PJCIS reiterated its view that an independent reviewer should be established in a further report in September 2007.<sup>9</sup> In November 2008, the Hon John Clarke QC recommended in his report on the case of Dr Mohamed Haneef that consideration be given to the appointment of an independent reviewer of Commonwealth counter-terrorism laws.<sup>10</sup>

1.14 Also in 2008, the Senate Standing Committee on Legal and Constitutional Affairs inquired into and reported on a private senators' bill co-sponsored by Senators Troeth and Humphries, which sought to establish an independent reviewer of terrorism laws. The committee recommended that the Bill be supported in principle, and that several amendments be made before the Bill's passage.<sup>11</sup> The private senators' bill was passed by the Senate on 13 November 2008, incorporating amendments recommended by the committee's report.<sup>12</sup> This Bill was then introduced into the House of Representatives, where it lapsed at the end of the 42<sup>nd</sup> Parliament in 2010.

#### *Decision to establish the INSLM*

1.15 On 23 December 2008, the then Attorney-General, the Hon Robert McClelland MP, announced the decision to establish the position of the National Security Legislation Monitor as an independent statutory office within the Prime Minister's portfolio, to review the practical operation of counter-terrorism legislation on an annual basis.<sup>13</sup>

1.16 The legislation implementing this decision, the National Security Legislation Monitor Bill 2009, was introduced into Parliament in June 2009, before being passed

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7 Security Legislation Review Committee, *Report of the Security Legislation Review Committee*, June 2006, p. 6.

8 Parliamentary Joint Committee on Intelligence and Security, *Review of Security and Counter Terrorism Legislation*, December 2006, p. vii.

9 Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code*, September 2007, p. 52.

10 The Hon John Clarke QC, *Report of the Inquiry into the Case of Dr Mohamed Haneef*, Volume 1, November 2008, pp 255-56.

11 Senate Standing Committee on Legal and Constitutional Affairs, *Independent Reviewer of Terrorism Laws Bill 2008 [No. 2]*, October 2008, p. ix.

12 *Journals of the Senate*, 13 November 2008, pp 1209-1213.

13 The Hon Robert McClelland MP, Attorney-General, 'Comprehensive Response to National Security Legislation Reviews', *Press Release*, 23 December 2008, p. 2.

in its final form in March 2010.<sup>14</sup> Several amendments were made during the bill's consideration by the Parliament, arising from recommendations by the Senate Finance and Public Administration Legislation Committee.<sup>15</sup>

1.17 The then Attorney-General stated in relation to the legislation establishing the office of the Monitor:

The government's aims in establishing the monitor are, firstly, to ensure that the laws which Australia has enacted or enhanced since 11 September 2001 to specifically address the threat of terrorism or security related concerns operate in an effective and accountable manner and, secondly, that these laws are consistent with Australia's international obligations, including our human rights, counterterrorism and international security obligations... This bill puts in place a mechanism for the regular review of Australia's counterterrorism and national security legislation and will provide for greater public confidence in the operation of those laws.<sup>16</sup>

1.18 The Hon Bret Walker SC was selected as the first appointee to the role of Monitor on 21 April 2011, and served as Monitor until the completion of his three year term on 20 April 2014.<sup>17</sup>

#### *Reports made by the Monitor since 2011*

1.19 During his tenure, Mr Walker SC provided four annual reports to the Prime Minister, all of which were subsequently tabled in Parliament.<sup>18</sup> Issues canvassed by the Monitor in these reports included:

- the use of control orders and preventative detention orders in the *Criminal Code Act 1995*;<sup>19</sup>
- the legislative definition of 'terrorism' in Australia and in other jurisdictions;<sup>20</sup>

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14 Independent National Security Legislation Monitor Bill 2010, *Bills Homepage*, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=s712](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s712) (accessed 19 January 2015).

15 Senate Finance and Public Administration Legislation Committee, *National Security Legislation Monitor Bill 2009*, September 2009.

16 The Hon Robert McClelland MP, Attorney-General, *House of Representatives Hansard*, 17 March 2010, p. 2846.

17 Department of Prime Minister and Cabinet, *Independent National Security Legislation Monitor*, <https://www.dpmc.gov.au/pmc/about-pmc/core-priorities/national-security-and-international-policy/independent-national-security-legislation-monitor> (accessed 19 January 2015).

18 The Monitor's four annual reports were provided to the Prime Minister on: 16 December 2011; 20 December 2012; 8 November 2013; and 28 March 2014. See: Department of Prime Minister and Cabinet, *Independent National Security Legislation Monitor*, <https://www.dpmc.gov.au/pmc/about-pmc/core-priorities/national-security-and-international-policy/independent-national-security-legislation-monitor> (accessed 19 January 2015).

19 Mr Bret Walker SC, *Independent National Security Legislation Monitor Declassified Annual Report*, 20 December 2012, Chapters II-III (pp 6-67).

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- Australia's international obligations and legislation relating to terrorism financing;<sup>21</sup> and
  - the legislative framework dealing with Australians and armed conflicts overseas, including rules relating to foreign evidence and citizenship issues.<sup>22</sup>

*Recent government decisions in relation to the office of the Monitor*

1.20 In March 2014 the government introduced a Bill to abolish the office of the Monitor, the Independent National Security Legislation Monitor Repeal Bill 2014, as one of its 'cutting red tape' initiatives. In his second reading speech to the repeal bill, the then Parliamentary Secretary to the Prime Minister, the Hon Josh Frydenburg MP, stated:

The government remains firmly in support of independent oversight of counter-terrorism and national security legislation, however, multiple independent oversight mechanisms already exist which perform this role. These include the Inspector-General of Intelligence and Security, the Australian Commission for Law Enforcement Integrity, the joint parliamentary committees on law enforcement and intelligence and security, and the parliament itself. The executive also has powers to appoint ad hoc reviews.

...[The] four reports [made by Mr Walker SC] are expected to cover the extensive list of key issues in Australian national security laws that the monitor indicated in his first annual report would be considered and reviewed during his term. The end of the monitor's term brings to an end this thorough review... The government considers the best way forward is to work through the large number of recommendations made by the monitor and to continue engaging with the extensive range of existing independent oversight bodies.<sup>23</sup>

1.21 The Attorney-General, the Hon George Brandis QC, then announced on 16 July 2014 that the government had reversed its decision to abolish the position of the Monitor. This decision came at the same time as the Attorney-General announced a new national security bill would be introduced as the 'first tranche' of a series of reforms to Australia's national security legislation:

...the Government has decided not to proceed with the Budget measure to abolish the Office of the [Monitor]. That was an economy measure. It's not something we particularly wanted to do. It's something that because of the Budget emergency and in the search for Budget savings within every portfolio we thought was something that we might have to do. But given

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20 Mr Bret Walker SC, *Independent National Security Legislation Monitor Declassified Annual Report*, 20 December 2012, Chapter VI (pp 108-124).

21 Mr Bret Walker SC, *Independent National Security Legislation Monitor Annual Report*, 7 November 2013.

22 Mr Bret Walker SC, *Independent National Security Legislation Monitor Annual Report*, 28 March 2014, Chapters III-V (pp 8-58).

23 The Hon Josh Frydenburg MP, *House of Representatives Hansard*, 19 March 2014, p. 2391.

that there is extensive new legislation being introduced by the Government...it was a good idea to retain the Office of the [Monitor].<sup>24</sup>

*Recent changes to national security laws and amendments to the INSLM Act*

1.22 The government introduced several pieces of legislation during 2014 which substantially altered the Commonwealth's legislative framework for dealing with terrorism and related matters. The relevant Bills passed by the Parliament were:

- the National Security Legislation Amendment Bill No. 1 2014;
- the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Foreign Fighters Bill); and
- the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014.

1.23 As these Bills amended existing Acts already within the scope of the Monitor's oversight remit, the changes will now form part of the body of legislation overseen by the Monitor. Additionally, the Foreign Fighters Bill, which passed both Houses on 30 October 2014, included amendments to the INSLM Act which provides that the Monitor must complete a review of specified aspects of the new counter-terrorism laws by 7 September 2017.<sup>25</sup>

*New appointment to the position of Monitor in December 2014*

1.24 With Mr Bret Walker SC having ended his tenure as Monitor on 20 April 2014, the position remained vacant until the Prime Minister announced on 7 December 2014 that the Hon Roger Gyles QC would be appointed to the role. The Prime Minister stated that Mr Gyles would commence the role 'immediately on an acting basis, pending consideration of a permanent appointment by the Governor-General as soon as practicable', and that Mr Gyles' first task as Monitor would be to review any impact on journalists of the section 35P provisions in the Government's first tranche of national security legislation, the *National Security Legislation Amendment Act No. 1 2014*.<sup>26</sup>

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24 The Hon George Brandis QC, Attorney-General, 'Press conference with Mr David Irvine AO, Director-General of Security', *Interview Transcript*, 16 July 2014, <http://www.attorneygeneral.gov.au/transcripts/Pages/2014/ThirdQuarter2014/16July2014-PressconferencewithMrDavidIrvineAODirectorGeneralofSecurity.aspx> (accessed 21 January 2015).

25 Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, Schedule 1, Part 1, Item 131A. The review will cover: the control order regime and preventative detention regime in the *Criminal Code Act 1995* (Criminal Code); the new 'declared areas' offence introduced into the Criminal Code by the Foreign Fighters Bill; terrorism stop, search and seizure powers in the *Crimes Act 1914*; and detention and questioning powers in the ASIO Act.

26 The Hon Tony Abbott MP, Prime Minister, 'Appointment of Independent National Security Legislation Monitor', *Press Release*, 7 December 2014, <https://www.pm.gov.au/media/2014-12-07/appointment-independent-national-security-legislation-monitor> (accessed 21 January 2015).

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## Overview of the Bill

1.25 The Explanatory Memorandum (EM) to the Bill states that the Bill aims 'to preserve and enhance the role of the Monitor' by making amendments that would:

- ensure that the Monitor can review *proposed* as well as existing national security legislation;
- make it clear in the objects clause of the [INSLM Act] that the Monitor is required to consider whether Australia's national security legislation is a *proportionate* response to the national security threat faced;
- enable the Senate Committees on Legal and Constitutional Affairs to refer matters to the Monitor for inquiry;
- enable the Australian Human Rights Commissioner to refer matters to the Monitor for inquiry;
- ensure that the position of Monitor is a full time position, cannot be left vacant and is supported by appropriate staff; and
- ensure that all reports of the Monitor are tabled in Parliament and that the Government is required to respond to the recommendations of the Monitor within six months of tabling.<sup>27</sup>

1.26 The EM stated further:

By preserving and enhancing the role of the Monitor, the Bill aims to give the Australian community confidence that Australia's counter-terrorism and national security laws are operating effectively and accountably, and in a manner consistent with Australia's international obligations, including human rights obligations.<sup>28</sup>

## Key provisions of the Bill

1.27 The Bill contains one schedule dealing with amendments to the INSLM Act and the *Australian Human Rights Commission Act 1986* (AHRC Act).<sup>29</sup> The proposed amendments to the INSLM Act are contained in Part 1 of Schedule 1 of the Bill, while the proposed amendments to the AHRC Act are contained in Part 2 of Schedule 1.

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27 Explanatory Memorandum (EM) to the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014, pp 3-4 (italics in original).

28 Explanatory Memorandum (EM) to the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014, p. 1.

29 The EM to the Bill incorrectly states that amendments to the INSLM Act and AHRC Act are contained in separate schedules; the Bill itself deals with amendments to the INSLM Act in Part 1 of Schedule 1 and amendments to the AHRC Act in Part 2 of Schedule 1.

### ***Changes to the objects of the INSLM Act and the role of the Monitor***

#### *Ability to review proposed as well as existing legislation*

1.28 The INSLM Act currently provides that the Monitor's role is to examine existing Commonwealth counter-terrorism and national security legislation.<sup>30</sup>

1.29 Items 1, 2 and 4 of the Bill would amend section 3 of the INSLM Act to provide that the object of the Act is to appoint a Monitor who will assist Ministers in relation to counter-terrorism and national security legislation 'and proposed counter-terrorism and national security legislation'. Items 7-9 of Schedule 1 of the Bill would amend section 6 of the INSLM Act (which details the functions of the Monitor) to allow the Monitor to review proposed legislation as well as existing legislation.

#### *Reflecting role of the Monitor in the objects clause*

1.30 Item 3 of Schedule 1 would insert a new paragraph (ba) into section 3 of the INSLM Act, to provide that it is part of the objects of the Act that the Monitor assist in ensuring that national security and counter-terrorism legislation (and proposed legislation) 'is, or would be, proportionate to any threats of terrorism and threats to national security'. The EM explains:

Subparagraph 6(1)(b) (ii) of the Act currently provides that the Monitor can, by his or her own initiative, inquire into whether any national security legislation "remains proportionate to any threat of terrorism or threat to national security, or both".

However, unlike other functions listed in section 6, this function is not currently reflected in the objects clause of the Act.

...Ensuring that such laws are proportionate is critical to an assessment of whether Australia is complying with its international human rights obligations, and also requires the Monitor to consider whether there are any other less rights-restrictive means for achieving the same legislative ends sought by the particular law. This process can lead to sound recommendations for how the proposed or existing laws could be improved or amended.<sup>31</sup>

#### *Enabling the Senate Legal and Constitutional Affairs Committees to refer matters to the Monitor*

1.31 The Bill seeks to expand the number of bodies that can refer matters to the Monitor. Item 12 of Schedule 1 of the Bill would insert new section 7B into the INSLM Act, to enable both the Senate Legal and Constitutional Affairs Legislation Committee and the Senate Legal and Constitutional Affairs References Committee (committees) to refer matters to the Monitor. Proposed new subsection 7B(1) provides

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30 The particular laws falling within the remit of the Monitor are detailed in section 4 of the INSLM Act; however, under subparagraph 6(1)(a)(ii) the Monitor may also review any other law of the Commonwealth to the extent that it relates to Australia's counter-terrorism and national security legislation.

31 EM, p. 11.

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that either of the committees may refer a matter to the Monitor of which it becomes aware in the course of performing its functions, and considers should be referred to the Monitor.

1.32 In relation to these proposed changes, the EM states:

Currently, only the Prime Minister and the Parliamentary Joint Committee on Intelligence and Security can refer matters to the Monitor for review and report. This limits the independent character of the Monitor, and can leave the Parliament without access to independent, expert advice on proposed and existing counter-terrorism and national security laws.

This amendment will ensure that the two Committees on Legal and Constitutional Affairs – who are regularly involved in scrutinising proposed and existing counter-terrorism laws – are empowered to refer relevant matters to the Monitor for review and reform.

In the last year, for example, these Committees considered at least six separate Bills that sought to reform or add to Australia's counter-terrorism and national security legislation. The vast majority of these Bills were considered while the position of Monitor remained vacant and without the benefit of a formal Government response to the past recommendations made by the Monitor.

This amendment will enable these Committees – that comprise of membership from a more representative cross section of the Parliament – with the opportunity to refer matters to the Monitor for review and inquiry.<sup>32</sup>

*Enabling the Australian Human Rights Commission to refer matters to the Monitor*

1.33 Amendments to the INSLM Act and the AHRC Act in the Bill seek to enable the AHRC to refer matters to the Monitor.

1.34 Item 24 of Schedule 1 of the Bill seeks to augment section 11 of the AHRC Act by making it a function of the AHRC to refer matters relating to Australia's counter-terrorism and national security legislation (or proposed legislation) to the Monitor, if the Commission considers it would be appropriate to do so.

1.35 Item 10 of Schedule 1 of the Bill seeks to amend subsection 6(1) of the INSLM Act to make it a function of the Monitor to report on any matter referred to it by the AHRC.

1.36 The EM states:

The [AHRC] is uniquely placed to identify whether and to what extent [counter-terrorism and national security] laws are engaging with or infringing upon human rights, and therefore would serve as an efficient and independent source of referrals to the Monitor.

For example, through its work with Arab and Muslim Australians, the [AHRC] is familiar with concerns that counter-terrorism legislation can

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32 EM, pp 14-15.

have a disproportionate impact on the rights of members of particular communities. This information could form the basis of a referral to the Monitor, who in turn, possesses unique information gathering powers that allow him or her to speak with the agencies responsible for implementing these laws and to comprehensively review the practical impact of counter-terrorism laws on individual rights.<sup>33</sup>

1.37 The EM also notes that these proposed changes are consistent with the AHRC's existing power to refer matters to the Inspector General of Intelligence and Security.<sup>34</sup>

### ***Changes to operational and staffing arrangements for the Monitor***

1.38 The Bill would introduce several changes to the operational and staffing arrangements in place for the Monitor.

#### *Appointment of a Monitor after a vacancy*

1.39 Item 15 of Schedule 1 would insert proposed new subsection 11(2A), which provides that if the office of Monitor is vacant, a recommendation must be made to the Governor-General to fill the position within three calendar months of it becoming vacant.

1.40 The EM notes that (at the time of the Bill being introduced on 3 December 2014) the position of Monitor had been vacant since April 2014:

As many legal and other experts have submitted to parliamentary committees, it is deeply regrettable that the office of Monitor should remain vacant at a time of the most significant legislative reform in this area for almost a decade.

This Item aims to prevent this scenario arising in the future by requiring the Prime Minister to take the appropriate steps towards appointing a permanent Monitor within three months of the position becoming vacant. This time frame provides adequate scope for expressions of interest to be sought and considered, while ensuring that the position is not left vacant for a prolonged period of time.<sup>35</sup>

#### *Full-time basis of the appointment as Monitor*

1.41 Item 14 of Schedule 1 would amend subsection 11(1) of the INSLM Act, which deals with the appointment of the Monitor, by changing the existing requirement that the appointment be made on a part-time basis, to instead require that the appointment be made on a full-time basis. The EM states:

The former Monitor, Mr Bret Walker SC, performed the role of Monitor on a part time basis...and produced four high quality and detailed reports.

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33 EM, p. 14.

34 EM, p. 21.

35 EM, p. 16.

However, it has since become apparent that the prolific pace of legislative reform to counter-terrorism and national security laws demands a full-time Monitor with adequate support staff.

For example, the scope of the Monitor's functions have recently been significantly expanded by the *Counter Terrorism Legislation (Foreign Fighters) Amendment Act 2014* which amended the Act by introducing a new subsection 6(1A) that requires the Monitor to review the sun-setting counter-terrorism provisions in the ASIO Act, the Criminal Code and the Crimes Act...by 7 September 2017.

...The changes proposed in this Bill, including expanding the function of the Monitor to review proposed counter-terrorism and national security laws and respond to references from the Committees on Legal and Constitutional Affairs and the [AHRC], will also increase the work load of the Monitor and require that the position be appointed on a full time basis.<sup>36</sup>

#### *Appointment of staff to assist the Monitor*

1.42 Item 17 of Schedule 1 would insert proposed new Division 3 of Part 2 of the INSLM Act, to enable the appointment of staff to the Monitor. Under these provisions, the Monitor can employ staff for the purposes of a particular inquiry if the Monitor is satisfied that it is necessary to employ a person in relation to the particular inquiry and the person has expertise appropriate to the inquiry. Under proposed new section 20B, the Monitor may delegate any or all of his or her functions or powers to staff members employed for the purposes of particular inquiries. The EM states:

This proposed new Division is necessary to support the expanded and full time role of the Monitor, and in recognition of the changes to the Monitor's functions as described above. These changes also enable the Monitor to appoint an expert to assist with a particular inquiry. Similar powers are currently available to the Inspector General of Intelligence and Security... without adequate staffing and access to subject-specific experts, there is a risk that the Monitor will not continue to be able to produce high quality, evidence based expert reports and recommendations or to respond to the pace to legislative change in this area.<sup>37</sup>

#### *Tabling requirements and government responses to reports of the Monitor*

1.43 Items 19-20 of Schedule 1 would introduce a new requirement into the INSLM Act that, within six months of a report of the Monitor being tabled in Parliament, the Prime Minister must make a statement to the Parliament setting out the action that the government proposed to take in relation to the report. The EM states that these amendments 'are necessary to ensure that the Government provides a timely and public response to any findings or recommendations made by the Monitor'.<sup>38</sup>

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36 EM, pp 15-16.

37 EM, pp 17-18.

38 EM, p. 18.

1.44 Item 21 of Schedule 1 would insert proposed new section 30A, providing for reporting requirements in situations where a reference is given to the Monitor by one of the Senate Legal and Constitutional Affairs Committees. These provisions largely mirror existing provisions that deal with the other reports of the Monitor, the primary difference being that reports are given in the first instance to the relevant committee chair (rather than the Prime Minister, who is the current recipient of all reports of the Monitor).

1.45 Under proposed new subsection 30A(6), the committee chair must cause a copy of a report received from the Monitor to be presented to each House of Parliament within 15 sitting days after the report has been received. Under proposed new subsection 30A(7), the Prime Minister would be required to provide a response to the Parliament in relation to any such report within six months of it being presented to the Parliament.